



ONCOR COMMUNICATIONS, INC.

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Secretary's Office
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: Filing of the Comments of Oncor Communications, Inc.
Docket No. 92-77

Enclosed herewith is one original and four copies of the above referenced matter. Please file and return a stamped copy to my office via messenger. If you have any questions, please give me a call.

Sincerely,

Gregory M. Casey
Sr. Vice President
Regulatory & Telco Relations

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of
Billed Party Preference
for 0+ InterLATA Calls

CC Docket No. 92-77

Disclosures by Operator
Service Providers of
Serving Public Phones

RM No. 8606

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COMMENTS OF ONCOR COMMUNICATIONS, INC.
ON ALTERNATIVES TO BILLED PARTY PREFERENCE

Gregory M. Casey
Senior Vice President -
Regulatory and Telephone Company
Relations
Oncor Communications, Inc.
6707 Democracy Blvd.
Bethesda, MD 20817
(301) 571-8600

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

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**COMMENTS OF ONCOR COMMUNICATIONS, INC.
ON ALTERNATIVES TO BILLED PARTY PREFERENCE**

Operator Communications, Inc. d/b/a Oncor Communications, Inc. ("Oncor") respectfully submits these comments in response to two proposals recently presented to the Commission as alternatives to billed party preference, which is under consideration in CC Docket 92-77.¹ Although Oncor agrees with the premise that billed party preference ("BPP") is not in the public interest, neither of the alternatives should be adopted. Both alternatives propose to discourage rates considered "high" without directly affecting any of the conditions putting pressure on rates to increase. Oncor proposes as a preferable alternative that the Commission use its tariff review powers to set reasonable amounts pertaining to OSP costs. By setting cost levels for all OSP's including AT&T, the Commission will

¹ See Billed Party Preference for 0+ InterLATA Calls, Further Notice of Proposed Rulemaking, 9 FCC Rcd 3320 (1994).

eradicate the principal cause of unusually high OSP rates, and will enable market forces to drive objectionable OSP rates down to reasonable levels. This solution also recognizes AT&T's massive OSP rate increases that undoubtedly will be paid toward aggregator commissions. Moreover, this change will alter the market structure of the industry without the massive costs, confusion and inconvenience that would result from BPP.

I. THE PROPOSALS BEFORE THE COMMISSION

Two proposals are now before the Commission. First, the National Association of Attorneys General ("NAAG") proposes to require OSPs to provide an audible message warning customers they are not using their "regular" telephone company and encouraging them to dial around rather than use the presubscribed OSP. The message would be required whenever an OSP's rates would exceed the dominant carrier's (AT&T's) rates.²

Second, a coalition of parties led by the APCC, CompTel and several RBOCs has proposed a rate ceiling for operator services (the "APCC Proposal").³ Generally speaking, tariffed prices at or below the rate ceiling would be presumed lawful, while OSPs proposing rates above the ceiling would be required to provide adequate cost support for the rates. The ceiling is a variable rate, depending upon the duration of the call.

² Obviously, this message is inconsistent with TOCSIA's required message.

³ Since none of these parties, except for CompTel, has a direct vested interest in OSP rates, and indeed would probably prefer that OSP's go out of business, the proposal is somewhat akin to a dog recommending that the cat be neutered.

The rate ceiling proposal is offered as an alternative to BPP. The NAAG proposal is offered as a stand alone rule, either instead of BPP or as an interim measure pending implementation of BPP.

II. AS THESE PROPOSALS INDICATE, BPP IS NOT A DESIRABLE WAY OF ACHIEVING THE COMMISSION'S GOALS

The underlying premise of each proposal is that BPP is not the solution to problems in the operator services industry. Oncor wholeheartedly agrees with this premise. BPP's shortcomings are explained in detail in Oncor's comments in Docket 92-77⁴ and in the remainder of the record in that proceeding. Therefore, extensive elaboration is not necessary here. It is clear though, that BPP will be enormously expensive, would inconvenience many more callers than it would benefit, and, at a time when the RBOCs are pressing to enter the long distance market, would create another LEC bottleneck over which the RBOCs could exercise monopoly power to the detriment of competitive markets. It is appropriate, therefore, for the Commission to examine the specific goals it seeks to achieve and to consider less costly alternatives to achieve them.

III. BOTH THE APCC "RATE CEILING" AND THE NAAG "KILL MESSAGE" PROPOSAL SHOULD BE REJECTED AND THE COMMISSION SHOULD ADDRESS THE REASONS THAT OSP RATES ARE "HIGH" WHEN FORMULATING POLICY.

While the APCC proposal appears to be aimed at reducing OSP rates, the NAAG proposal appears to try to push users away from

⁴ Oncor, Comments on Further Notice of Proposed Rulemaking, CC Docket No. 92-77 (August 1, 1994).

using an OSP. However, the approach of each appears to be, in effect, to punish an OSP with rates above a level deemed to be acceptable. Significantly, neither of these approaches were authorized by Congress when it set the ground rules for the operator service industry with TOCSIA. With TOCSIA, Congress selected OSP branding and access code unblocking as the means to protect consumers. The FCC "[is] bound, not only by the ultimate purposes Congress has selected, but by the means it has deemed appropriate, and prescribed, for the pursuit of those purposes."⁵ As the D.C. Circuit recently emphasized, "The FCC cannot abandon [a] legislative scheme because it thinks it has a better idea."⁶ Thus, if the FCC thinks TOCSIA's protections should be replaced with a different scheme, it should address those views to the Congress.

Moreover, since AT&T has had the largest OSP rate increases, approximately \$1 billion in the last three years, neither proposal addresses the macro-economic aggregate that consumers pay.⁷ Both proposals favor AT&T. In any event, both proposals fail to address the market structure which can lead to these

⁵ MCI Telecommunications Corp. v. AT&T, 114 S. Ct. 2223, 2231-32 n.4 (1994).

⁶ Southwestern Bell Corp. v. FCC, 43 F.3d 1515 (D.C. Cir. 1995).

⁷ AT&T transmittal nos. 8228, 8230, 8231, and 8235, all of which propose various increases in service charges and transport rates for operator station, calling card, or person to person calling, are just the most recent example of AT&T's pattern of rate increases.

rates, and accordingly is not likely to provide a long term solution to perceived rate issues.

In the past, OSP's have argued that higher rates are a product of many factors, including access, validation and billing and collection costs (many of which remain above those paid by AT&T due to unfair advantages the Commission has permitted it to retain from its pre-divestiture monopoly). Current OSP rates, primarily driven by reduced volumes, are also the product of AT&T's monopolization of the hotel OSP market (23 out of 23 major hotel chains), AT&T's dumping of 30 million CIID cards on a confused marketplace and dial-around due to AT&T's ubiquitous advertising.⁹ An OSP charges rates that meet its costs, plus a reasonable return on its investment. Costs increase on a per call basis when volumes decrease.

These reductions in volumes have been accelerating over the past three years. Where OSP rates in 1990 and 1991 probably could have sustained the proposed rate cap because the only differences were billing and collection, validation and other

⁸ See Letter from the Commission to Robert E. Allen, AT&T, 7 FCC Rcd 7529 (1992) (issuing a "strong admonition" to AT&T for false and confusing statements relating to its CIID Calling Cards). AT&T's actions have forced Oncor to seek redress in the courts. See International Telecharge, Inc. et al. v. AT&T, Case No. 92-1722 (MJG) (D.Md. 1992).

⁹ Even BPP's remaining properties acknowledge dial around is nearly a majority of calling today. See Ameritech Comments, CC Docket 92-77, at 8 (August 1, 1994), (55%), Sprint exparte, CC Docket 92-77 (December 23, 1994) (44%).

micro economical scale disparities¹⁰, massive volume reduction due to AT&T's actions has lead to a market phenomena whereby OSP costs have risen and aggregators have demanded more money per call to make up for lost volume. The FCC has, in the past, recognized commissions as one of the highest OSP costs. That cost and other costs have risen as volumes have gone down, and consequently rates have gone up.

In a presubscription environment, the aggregator exercises a great degree of control over the OSP's costs and, in turn, the rates that will be charged from the telephone in question. The aggregator's choice of a presubscribed OSP is guided by two principal concerns: (1) to obtain reasonable compensation for the use of the aggregator's facilities for the provision of telephone service, and (2) to secure telephone services that meet the needs of its customers and guests, including their price expectations. Not surprisingly,¹¹ for some aggregators the first concern (compensation) has taken precedence over the second concern (reasonable service), and the aggregator has engaged OSPs in a commission bidding contest intended to exact the maximum possible commission amount.

¹⁰ Even in 1991, however, the Commission found that OSP expenses equalled 94.5 percent of OSP revenues. Final Report of the Federal Communications Commission Pursuant to the Telephone Operator Consumer Services Improvement Act of 1990, at 18 (November 13, 1992). Clearly, OSP's unequal costs contributed substantially to their higher rates.

¹¹ Because of the unresolved spectre of BPP, many aggregators and some OSPs have engaged in accelerated investment recovery.

Oncor, for example, offers several different rate plans to aggregators, and an accompanying commission plan for each. The aggregator then is free to choose the plans which best balance its concerns for compensation and reasonable service to customers. Not surprisingly, Oncor cannot pay a higher commission to the aggregator without recouping that added cost through higher rates. If Oncor refuses to meet an aggregator's commission demands, however, there almost always will be a competitor ready and willing to pay that commission. Therefore, Oncor is forced by natural market pressures to accede to the aggregator's demands for high commissions (and thus to charge a rate that will recover the expense).

The other market force that has been accelerated since the introduction of the CIID card by AT&T is a return by aggregators to AT&T whose volumes have not been affected and where risk of customer complaints is minimized. AT&T's market power is evident in their ability to raise prices with impunity, thereby gaining additional revenues for the payment of commissions.¹²

Neither the APCC "rate ceiling" nor the NAAG "kill message" would alter the relationship between the aggregator's two concerns or address AT&T's billion dollar rate increase. Both will result in failure as OSPs will continue to compete for business and some aggregators will continue to demand large commissions. Indeed, both plans are preordained to fail because

¹²AT&T's most recent rate increase exceeded all of the OSP industry's combined annual revenues!

carriers have a legal right to recover their costs,¹³ and the commission expense which drives OSP rate levels is a recoverable expense. Thus, OSPs need only to prove up these costs in the inevitable rate hearing to avoid the APCC and NAAG remedies. Apart from commissions, those costs have increased substantially due to CIID Card and dial-around induced volume reductions. Moreover, if AT&T's market power and recent rate increases are not recognized as a competitive driver of high OSP rates, commissions will continue to climb based on AT&T's new found resources to "win back" customers. Eventually, all aggregators will return to AT&T at higher rates to consumers as AT&T supports its re-monopolization strategy with rate increases.

The fact that a change in the market incentives will lead to a change in OSP rates does not, however, mean that the presubscription environment should be abandoned. As the Commission has recognized,¹⁴ an aggregator provides a public benefit when it makes telephones available to its customers or the public and is entitled to receive compensation for those services. In addition, the aggregator incurs expenses and/or forgoes alternative revenue sources in choosing to provide telephone services. Elimination of presubscription will eliminate the aggregator's ability to recover these expenses and

¹³ Bluefield Water Works & Improvement Co. v. Public Serv. Commission, 262 U.S. 679, 690 (1923); See United States v. FCC, 707 F.2d 610, 612 (D.C.Cir 1983).

¹⁴ Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Report and Order and Further Notice of Proposed Rulemaking, 6 FCC Rcd 4736, 4745-46 (1991).

is likely to destroy any incentive to provide anything beyond the most basic telephone service that will meet a customer's need.

Oncor favors an intermediate option, one which alters the market incentives while preserving the benefits of the presubscription environment. If the Commission sets a level of compensation that an aggregator may receive, and that an OSP may pay, this will be more effective in reducing OSP rates. As stated previously, an aggregator balances two, often competing concerns: (1) to obtain compensation for itself and (2) to provide reasonable telephone services to its customers and guests. By setting a compensation amount, the Commission will limit the ability of the compensation concern to dominate the presubscription decision.¹⁵ Moreover, the Commission should consider limiting the amount of commission that AT&T may pay to eliminate additional AT&T rate increases. This level will recognize AT&T's dominant position and past marketing activities, and should be approximately 50% of the OSP level or whatever amount the Commission determines is sufficient to forestall additional AT&T rate increases to consumers. Once an aggregator becomes aware of this, it will then stand more perfectly in the shoes of its customers and demand the maximum service at the lowest possible costs. The choice of OSPs will focus more on the service aspect, rather than the commission aspect, and OSPs will

¹⁵ In addition, aggregators who have fought for stability in the form of dial-around compensation will also enjoy this benefit in the area of commissions. Indeed, in some cases aggregator commissions may increase where the smaller aggregator has been ignored or discriminated against.

redirect their competition to meet these needs. This will have the effect of allowing competition - not arbitrary regulatory fiat - to lower OSP rates, while simultaneously enabling aggregators to recover reasonable commission payments.

The Commission has ample legal authority to reach this result. While the Commission has described commission payments to traffic aggregators as a "legitimate business expense"¹⁶ and refused to require that such commission payments be tariffed, the Commission has indicated that commission payments which are "excessive or otherwise unreasonable" could be disallowed as an operating expense.¹⁷ Notably, the Commission has previously exercised its jurisdiction in this area by ordering OSPs to pay prescribed compensation to private payphone owners for the delivery of access code calls.¹⁸

Therefore, as part of an industry-wide review of OSP rates, including AT&T's, the Commission could determine a maximum amount per call which OSPs and AT&T may recover in rates charged to end users. The Commission can then order AT&T and OSPs to reduce or set commission payments accordingly, and to pass through all

¹⁶ National Telephone Services, File No. ENF-88-12, Memorandum Opinion & Order, ¶ 9 (Comm. Carrier Bureau 1993), ("NTS Order"); AT&T's Private Payphone Commission Plan, 3 FCC Rcd 5834 (Comm. Carrier Bureau 1988), recon. and rev. denied, FCC 92-453 (1992).

¹⁷ See NTS Order, at fn. 12. Indeed, it is axiomatic that the Commission may disallow recovery of unreasonable expenses incurred by common carriers subject to its jurisdiction.

¹⁸ Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, 7 FCC Rcd 3251 (1992).

resultant cost savings in the form of reduced tariff rates. Indeed, once commission levels are established, market forces will augment FCC tariff review to ensure that rates are kept at reasonable levels.

CONCLUSION

For the foregoing reasons, Oncor opposes the NAAG proposal and the APCC rate ceiling. The Commission should instead act to set the amount of compensation an aggregator may receive as part of the OSP's rate. This measure will attack directly the market structures that make high rates, including AT&T's, a competitive necessity and will be more effective in bringing about a reduction in OSP and AT&T rates. Consumers will be benefitted by concurrent rate reductions by OSP's and AT&T.

Respectfully submitted,

ONCOR COMMUNICATIONS, INC.

By: _____
Gregory M. Casey
Senior Vice President -
Regulatory and Telephone Company
Relations
Oncor Communications, Inc.
6707 Democracy Blvd.
Bethesda, MD 20817
(301) 571-8600

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